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DOC #: ________
DATE FILED: 12/18/2014

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PAUL C. ULRICH,

Plaintiff,

- against -

MOODY'S CORPORATION, et al.,

Defendants.

--- X

13-CV-8 (VSB)

ORDER

VERNON S. BRODERICK, United States District Judge:

On November 23, 2014, Plaintiff filed a letter requesting a pre-motion conference for a motion for sanctions under Federal Rule of Civil Procedure 11. (Doc. 59.) Defendants filed a letter response on December 1, 2014. (Doc. 61.) No further briefing is necessary. Plaintiff's request for sanctions is DENIED for the following reasons.

First, Rule 11(c) provides that "[a] motion for sanctions . . . must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets." This provision creates a safe harbor for the withdrawal of offending papers. Plaintiff did not comply with the safe harbor here, (Doc. 61 at 1), and therefore cannot prevail on a motion for sanctions, *Perpetual Sec., Inc. v. Tang*, 290 F.3d 132, 142 (2d Cir. 2002) (reversing Rule 11 sanctions where appellee failed to comply with safe harbor provision).

Second, "[b]ecause Rule 11 sanctions represent a drastic, extraordinary remedy, courts seldom issue them and then only as a (very) last resort. Put another way, a Rule 11 motion may not be granted unless a particular allegation is utterly lacking in support." *Anderson News, L.L.C. v. Am. Media, Inc.*, No. 09-CV-2227, 2013 WL 1746062, at *4 (S.D.N.Y. Apr. 23, 2013) (internal quotation marks omitted) (denying sanctions); *see also Schlaifer Nance & Co. v. Estate of Warhol*, 194 F.3d 323, 334 (2d Cir. 1999) (district courts must exercise "restraint and discretion" in imposing sanctions). Under that standard, Plaintiff's proposed bases for the imposition of sanctions are insufficient on the merits.

Plaintiff claims that sanctions are appropriate because Defendants cited his salary, paid in Hong Kong dollars, in a letter to the EEOC as US$116,300 when it was actually US$105,000, (*see* Doc. 34). Plaintiff fails to provide any indication that this was anything other than a miscalculation, since Defendants listed the accurate figure in Hong Kong dollars. Nor has he come forward with any reason why sanctions are appropriate for a statement Defendants did not make in connection with this litigation, and that was only submitted in briefing Defendant's Motion to Dismiss after Plaintiff characterized it in his opposition papers, (*see* Doc. 30 at 20; Doc. 33 ¶ 4). And the alleged misrepresentation did not prejudice Plaintiff, for the claim to which it relates survived the Motion to Dismiss. (*See* Doc. 50 at 22.) Plaintiff also claims that Defendants misrepresented in their Motion to Dismiss, (*see* Doc. 28 at 22), that Brian Cahill "hired" Plaintiff. But, to support his contention, Plaintiff cites an email chain that can be read to suggest that Cahill hired him. (*See* Doc. 29-1, Ex. T.)

Finally, these are both factual issues that should be tested in the discovery process, which has not even started in this case, not argued on a motion for sanctions. *See Burns v. Bank of Am.*, No. 03-CV-1685, 2007 WL 1589437, at *10 (S.D.N.Y. June 4, 2007) ("it is premature to consider a motion for sanctions on [issues of evidentiary support for arguments] where, as here, the parties are still in the midst of discovery").

SO ORDERED.

Dated: December 18, 2014
New York, New York

Vernon S. Broderick
United States District Judge